

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LAROY THOMAS,

Defendant-Appellant.

UNPUBLISHED

February 3, 1998

No. 193214

Muskegon Circuit Court

LC No. 95-138326-FC

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant was found guilty by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and being a prisoner in possession of a weapon, MCL 800.283(4); MSA 28.1623(4). For those respective convictions, he was sentenced as a third felony offender, MCL 769.11; MSA 28.1083, to twelve to twenty years' imprisonment and five to ten years' imprisonment, to be served concurrently to each other but consecutively to the sentences that he was then serving. Defendant appeals as of right. We affirm.

I

Defendant first claims that there is insufficient evidence of his involvement in the stabbing incident to support his conviction of assault with intent to do great bodily harm less than murder. We disagree.

When viewed in a light most favorable to the prosecution, *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), the evidence reveals that defendant's involvement was more than merely being present at the scene of the assault upon the victim and that he did more than merely "associate with evil men." Based on the victim's testimony, the jury could have reasonably believed that defendant actively aided and abetted codefendant Bristol and participated in the planning of the victim's stabbing and acted in concert with codefendants Bristol and Taylor during the incident, with defendant furnishing the weapon with which Bristol repeatedly stabbed the victim and by acting as a lookout while Bristol made repeated attempts to stab the victim—including jabs at the victim's heart, back, neck and head areas. Aiding and abetting describes all forms of assistance rendered to the principal in the commission of a crime and comprehends all

words or deeds that might support, encourage, or incite the commission of the crime, *People v Bigelow*, 225 Mich App 806; ___ NW2d ___ (1997), even if the aider and abettor merely acted as a “lookout.” *People v Davenport*, 122 Mich App 159, 162; 332 NW2d 443 (1982). There was legally sufficient evidence by which the jury could conclude that defendant’s actions supported, encouraged and assisted Bristol in the stabbing assault of the victim, which resulted in great bodily harm to the victim.

II

We also find to be without merit defendant’s claim that the jury rendered an invalid inconsistent verdict because it found Bristol guilty of assault with intent to murder, MCL 750.83; MSA 28.278, and found defendant and Taylor guilty of the lesser crime of assault with intent to do great bodily harm less than murder for the same assault on the victim. An aider and abettor must possess the same requisite intent as that necessary to be convicted of the crime as a principal. *People v Barrera*, 451 Mich 261, 294; 547 NW2d 280 (1996); *People v Kelly*, 423 Mich 261, 278; 378 NW2d 365 (1985). As an aider and abettor to Bristol, defendant’s intent to kill the victim may be inferred from the circumstances set forth above. See *People v Taylor*, 422 Mich 554, 567-568; 375 NW2d 1 (1985). This is not a case where defendant claimed that he was surprised at Bristol’s actions or that he anticipated that the victim would merely be beaten or roughed up a little, thereby evidencing only an intent to injure and not to kill. See, e.g., *Barrera, supra* at 286-289.

We note, however, that inconsistent verdicts are permissible in Michigan, *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982); *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980), and that an aider and abettor can be convicted of an offense lower in degree than the offense of which the principal is convicted, *People v Buck*, 197 Mich App 404, 421; 496 NW2d 321 (1992), and may be convicted and punished as if he directly committed the offense even if the principal is not convicted, *People v Dilling*, 222 Mich App 44, 50; 564 NW2d 56 (1997). We believe that in this case the jury used its power of leniency in its verdict regarding defendant, perhaps because it believed defendant was not as culpable as Bristol, who engaged in the actual stabbing of the victim. See *Vaughn, supra*.

III

Next, we conclude that manifest injustice did not result to defendant by the trial court’s failure to charge the jury with the instruction on identification, CJI2d 7.8, or by the court’s use of CJI2d 8.5 in instructing the jury regarding “mere presence.” Although the evidence would have supported an instruction on identification if requested by defendant, the court adequately informed the jury of the factors that may affect the reliability of an eyewitness’ identification of a defendant. Defendant’s rights were sufficiently protected by the instructions issued. *People v Messenger*, 221 Mich App 171, 177-178; 561 NW2d 463 (1997); see *People v Kachar*, 400 Mich 78, 94-96; 252 NW2d 807 (1977). Likewise, the instruction on mere presence, in conjunction with the court’s instructions on aiding and abetting, adequately instructed the jury on the elements of aiding and abetting and did not exclude consideration of material issues, defenses and theories presented by defendant. *People v Moldenhauer*, 210 Mich App 158, 160; 533 NW2d 9 (1995).

Because there was no error in the instructions by the trial court, defendant was neither prejudiced nor deprived of a fair trial and was not deprived of the effective assistance of counsel in this regard. *People v Pickens*, 446 Mich 298, 303, 312, 338; 521 NW2d 797 (1994).

IV

Finally, we affirm the sentences imposed on defendant. Contrary to defendant's assertion, the trial court stated objective reasons for the sentences imposed and considered defendant's potential for rehabilitation. However, the court rightfully concluded that defendant had demonstrated very little potential for rehabilitation and that the appropriate focus should be on deterring and disciplining defendant for his behavior. See *People v Cervantes*, 448 Mich 620, 627-628; 532 NW2d 831 (1995).

We further find the sentences to be proportionate. The sentences are within the statutory limits authorized by the legislature for an habitual offender, third offense under MCL 769.11(1)(a); MSA 28.1083(1)(a), and defendant's extensive criminal history and his clear inability to reform lead us to conclude that the trial court did not abuse its discretion in imposing defendant's sentences. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ William B. Murphy